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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MIKAL A.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B292699

(Los Angeles County
Super. Ct. No. DK22422)

ORIGINAL PROCEEDINGS in mandate. Veronica S.
McBeth, Judge. Petition denied.

Law Office of Jolene Metzger, Steven Shenfeld and Tiffany Horton for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Peter Ferrera, Principal Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

At the most recent status review hearing for three-year-old Z.O., the juvenile court found she could not safely be returned to either parent's custody. The juvenile court terminated reunification services for both parents and scheduled a selection and implementation hearing. (Welf. & Inst. Code, § 366.26.) Father Mikal A. petitions for extraordinary relief, arguing that the juvenile court lacks subject matter jurisdiction. (Cal. Rules of Court, rule 8.452.) We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Z.O. was born in Arizona in September 2015. Father was imprisoned in Arizona shortly after her birth. In late December 2016 or early January 2017, mother and her boyfriend left Arizona with Z.O. They briefly went to Washington state and then to California.

While in southern California, the three of them stayed on-and-off with mother's boyfriend's mother, C.N. (The record alternately refers to her as C.N. or C.W. We refer to her as C.N. throughout.) In approximately late February 2017, mother left Z.O. with C.N. and drove with her boyfriend to northern California, apparently for temporary work. By the time of the initial removal on April 6, 2017, Z.O. had been with C.N. for over a month. Mother explained that a car accident had left her and her boyfriend stranded and homeless in Sacramento and that she

had been trying to get back to southern California. But while mother did eventually secure transportation out of the area, she returned not to southern California, but to Arizona.

When social workers from the Los Angeles County Department of Children and Family Services entered C.N.'s one-room apartment, C.N. was partially unclothed and a man was in her bed, with Z.O. asleep on the floor. Z.O. was unclean and smelled of smoke, the home was unclean, there were cigarettes and blunts on the dresser, there was an almost-empty bottle of rum on the side of the bed, and there appeared to be pornographic images on the television.

The man in C.N.'s apartment was a registered sex offender who recently had been released from prison. C.N. acknowledged that they had been engaging in sexual activity in front of Z.O. C.N. declined to take a drug test, drank alcohol throughout the interview with social workers, and said that she did not feel it was harmful to drink while caring for Z.O. The department detained Z.O. and placed her in a foster home.

The department's original petition alleged that mother had "failed to make an appropriate plan for [Z.O.'s] ongoing care and supervision" by leaving her in the care of an unrelated adult who abused alcohol and marijuana, engaged in sexual activities in her presence, and allowed a registered sex offender into the home. "Such an inappropriate plan . . . endangers the child's physical health and safety and places the child at risk of serious physical harm, damage, and danger."

At the initial hearing on April 11, 2017, the juvenile court found that substantial danger existed to Z.O.'s physical or emotional health and that there was no reasonable means to protect her without removal. The court thus ordered Z.O.

detained. The court also ordered the department to provide information in its next report “regarding a possible dependency case in Arizona.”

The department then filed a first amended petition, which added an allegation that mother and her boyfriend “have a history of engaging in verbal and violent altercations. Recently the boyfriend physically assaulted the mother, threatened her with a knife, and broke her rib. Prior to this on 03/30/17, the boyfriend was arrested for battery as he physically tackled the mother to the ground and assaulted her in a public space.”

On May 31, 2017, the department provided information to the juvenile court about proceedings in Arizona. After Z.O. reportedly tested positive for THC at birth, Arizona Child Protective Services provided mother with services from September 2015 to February 2016. The department also provided a copy of an emergency appointment issued by the superior court in Maricopa County, Arizona, naming paternal grandmother Z.O.’s temporary guardian. The order is dated December 22, 2016 and was filed January 5, 2017 and, by its terms, was to expire within six months of its date. On February 22, 2017, paternal grandmother filed a request in the Maricopa County Superior Court to “stop the request Petition to termination filed on 1-5-17,” and notifying the court that mother had left with the baby.

The juvenile court ordered the department to investigate the potential placement of Z.O. with paternal grandparents in Arizona pursuant to the Interstate Compact on Placement of Children. (Fam. Code, § 7900 et seq. All statutory references are to the Family Code unless otherwise specified.) The department contacted Arizona Child Protective Services and the Maricopa

County Juvenile Court. CPS in Arizona reported no concerns about placing Z.O. with paternal grandparents. But the office of the presiding judge of the juvenile court in Maricopa County told the department that, to transfer jurisdiction, a referral would have to be generated with CPS in Arizona. Mother's whereabouts at the time were unknown. Father was released from prison on about July 24, 2017. His parents received a phone call from him shortly after his release, but were not otherwise in contact with him during this time period and could not provide the department with contact information for him.

The department recommended to the court that, because mother's whereabouts were unknown, it appeared unlikely that CPS in Arizona would accept a referral or that the Arizona court would accept jurisdiction. The department thus urged the juvenile court to assume jurisdiction. At the jurisdiction and disposition hearing, father's counsel argued that the court should not take jurisdiction, but that if it did, it should place Z.O. with paternal grandmother.

The court held that it has jurisdiction over the matter: "I think Arizona's statement to this court that they declined jurisdiction gives this court jurisdiction over the matter given the fact that (b)(1) and (b)(2) are proven." The court also agreed with Z.O.'s counsel's statement that, "[m]y understanding is that Arizona had informed this court that they do not intend to take jurisdiction" The court also sustained the amended petition, declared Z.O. a dependent, and ordered family reunification services for mother and father.

Although paternal grandparents previously had sought custody of Z.O., they expressed a change of heart in early February 2018. They told the department that they had given

the matter a great deal of care and consideration and had been in contact with Z.O.'s foster mother, and had decided that the best thing for Z.O. would be for her to remain with her foster mother.

The juvenile court held a six-month review hearing on April 25, 2018. Both parents had failed to maintain contact with the department since the court had ordered family reunification services. Father had not contacted the department since being released from prison and had never contacted Z.O.'s foster mother.

Father's parole was revoked on May 17, 2018, with a scheduled release date of October 28, 2018. Father contacted the department from prison through an officer, who confirmed that father had completed a parenting class in prison and would be able to participate telephonically in an upcoming hearing.

On September 12, 2018, the juvenile court found that the parents' progress toward alleviating the factors requiring placement "have been minimal," terminated services for the parents, and set a permanency plan hearing for January 16, 2019.

Father timely filed a notice of intent to file a writ petition. The present petition for extraordinary relief followed.

DISCUSSION

Father contends that the juvenile court lacks subject matter jurisdiction to issue any orders beyond those made necessary in the exercise of temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (§ 3400 et seq.). We disagree.

A. Governing Law and Standard of Review

The UCCJEA governs child dependency cases. (*In re Aiden L.* (2017) 16 Cal.App.5th 508, 516.) California and Arizona

have both adopted the UCCJEA. (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1096.) The UCCJEA is the exclusive method for determining the proper forum and subject matter jurisdiction in child custody proceedings involving other jurisdictions. (§ 3421, subd. (b); *In re Aiden L.*, at p. 516.) The purposes of the UCCJEA include: avoiding jurisdictional conflict among states; promoting interstate cooperation; litigating custody where the child and family have the closest connections; avoiding relitigation of another state's custody decisions; and facilitating enforcement of another state's custody decrees. (*In re Cristian I.*, at p. 1099.)

Subject matter jurisdiction either exists or does not exist at the beginning of the dependency case. (*In re Aiden L.*, *supra*, 16 Cal.App.5th at p. 516.) The mere presence of the parties does not confer subject matter jurisdiction. (*Ibid.*) Rather, California may assume jurisdiction if any of several circumstances applies: (1) California is the child's home state – that is, the child lived in California with a parent or a person acting as a parent for at least six consecutive months immediately before the proceedings began; (2) another state does not qualify as the child's home state; (3) the child's home state has declined to exercise jurisdiction; (4) all courts having jurisdiction have declined to exercise jurisdiction; or (5) no other state has jurisdiction under the foregoing tests. (*In re A.M.* (2014) 224 Cal.App.4th 593, 598; see also §§ 3421, subd. (a), 3402, subd. (g).) Where the child's home state has declined to exercise jurisdiction or where the child does not have a home state, California may exercise jurisdiction if “[t]he child and . . . at least one parent . . . have a significant connection with this state other than mere physical presence” and “[s]ubstantial evidence is available in this state concerning

the child's care, protection, training, and personal relationships.” (§ 3421, subd. (a)(2)(A) & (B); *In re R.L.* (2016) 4 Cal.App.5th 125, 140.)

A state can qualify as a child's home state if it was “the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.” (§ 3421, subd. (a)(1), (4).) The child's home state has priority over other states that may exercise jurisdiction on other bases. (*In re Aiden L.*, *supra*, 16 Cal.App.5th at p. 518.)

A court without jurisdiction under section 3421, subdivision (a) may nonetheless exercise temporary emergency jurisdiction. (*In re Cristian I.*, *supra*, 224 Cal.App.4th at p. 1097; *In re Gino C.* (2014) 224 Cal.App.4th 959, 965.) “A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child . . . is subjected to, or threatened with, mistreatment or abuse.” (§ 3424, subd. (a).) The juvenile court must first properly assert jurisdiction under a nonemergency jurisdiction provision of the UCCJEA before addressing the merits of the dependency petition or making a final child custody determination. (*In re Aiden L.*, *supra*, 16 Cal.App.5th at p. 518; *In re Gino C.*, at pp. 965-966.)

If a court exercising emergency jurisdiction is aware that another state is the child's home state, the California court must contact a home state court and allow the home state court to determine whether to assert home state jurisdiction. (*In re Aiden L.*, *supra*, 16 Cal.App.5th at pp. 518-519.) The home state may

decline jurisdiction without issuing an express order. (*Id.* at p. 519.) Any refusal to exercise jurisdiction, including mere inaction, constitutes a declination of jurisdiction on the basis that California is the more appropriate forum under section 3421, subdivision (a)(2). (*In re Aiden L.*, at p. 519, citing *In re M.M.* (2015) 240 Cal.App.4th 703, 717.) The juvenile court’s failure to comply with the UCCJEA’s procedural requirements is subject to a harmless error analysis. (*In re R.L.*, *supra*, 4 Cal.App.5th at p. 143; *In re Cristian I.*, *supra*, 224 Cal.App.4th at p. 1098-1099.)

We review for substantial evidence the jurisdictional findings under the UCCJEA. (*In re A.C.* (2017) 13 Cal.App.5th 661, 669.) But we review de novo the juvenile court’s statutory interpretation, and its determination of jurisdictional facts based on the undisputed evidence. (*Id.* at p. 670.) “All intendments and presumptions are made to support a trial court’s judgments, orders, rulings, and other actions where the record is silent, and it is the appellant’s burden on appeal to show those actions are erroneous.” (*Id.* at p. 673.)

B. Analysis

Father does not dispute that the juvenile court had the authority to exercise temporary emergency jurisdiction at the outset of these proceedings. He contends that the juvenile court erred in then concluding it had jurisdiction under nonemergency provisions of the UCCJEA to reach the merits of the petition.

The parties agree that California was not Z.O.’s home state. Father contends Arizona was Z.O.’s home state. Within six months before these proceedings began, Z.O. had been living in Arizona with mother for at least six months. Although neither of them was still living in Arizona when these proceedings commenced, father was still incarcerated in Arizona. An Arizona

court had issued an emergency temporary guardianship, although the status of the Arizona proceedings at the time these proceedings began is unclear. It appears that mother and Z.O. had left Arizona by the time the temporary guardianship papers were filed, and the record does not reflect what steps the Arizona court took, if any, in response to paternal grandmother's request to dismiss the Arizona proceedings.

The department, in contrast, argues that Z.O. did not have a home state. The department argues that father's continued presence in Arizona was insufficient to render Arizona Z.O.'s home state because Z.O. never lived with him. We need not resolve this dispute because, in either case, the juvenile court did not err in assuming jurisdiction.

At some time between the initial hearing on April 11, 2017 and the jurisdiction and disposition hearing on October 18, 2017, the juvenile court spoke with the court in Arizona, and Arizona declined to exercise jurisdiction. While father argues that the record does not reveal any direct communications with the Arizona court, the juvenile court's statements during the October 18, 2017 hearing unambiguously reflect that the Arizona court communicated to the juvenile court that it declined jurisdiction.

Moreover, Z.O. and mother had a significant connection to California and "[s]ubstantial evidence is available in this state concerning the child's care, protection, training, and personal relationships." (§ 3421, subd. (a)(2)(A) & (B).) When these proceedings commenced, mother and Z.O. had been living in California for two to three months. Mother, her boyfriend, and Z.O. lived on-and-off with his mother, C.N., who was a California resident. Mother had abandoned Z.O. with C.N. in southern

California and was in Sacramento. Mother's boyfriend recently had been arrested due to domestic violence he allegedly committed against mother in northern California. Z.O. had been detained and placed with a foster mother in southern California.

The juvenile court did not err in exercising jurisdiction regardless whether Arizona was Z.O.'s home state. As the juvenile court said, "I'd prefer that Arizona would take jurisdiction but I'm not going to leave the child out to dry with no support."

Father contends that the juvenile court erred in failing immediately to contact the Arizona court when it learned Arizona had issued a temporary guardianship order. The record is unclear when the juvenile court contacted the Arizona court regarding jurisdiction. Nonetheless, during the initial hearing, the juvenile court instructed the department to investigate possible dependency proceedings in Arizona. The juvenile court then eventually spoke with the Arizona court and the Arizona court declined jurisdiction. The court memorialized this on the record during the jurisdiction and disposition hearing. To the extent the juvenile court's compliance with the UCCJEA was procedurally improper, we conclude that any error was harmless. (See, e.g., *In re Cristian I.*, *supra*, 224 Cal.App.4th at p. 1101 [concluding that the juvenile court's failure to communicate with the Arizona court immediately and the apparent lack of any direct communications between the two courts were harmless where the Arizona court ceded jurisdiction before the juvenile court determined that it had jurisdiction on the dependency petition].)

DISPOSITION

The petition is denied. This opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.

WILEY, J.

We concur:

BIGELOW, P. J.

STRATTON, J.